Supreme Court, U.S.
FILED
OCT 21 2002
OFFICE OF THE CLERK

(6)

No. 02-355

In the Supreme Court of the United States

SOUTHERN BUILDING CODE CONGRESS INTERNATIONAL, INC.,

Petitioner,

v.

PETER VEECK D/B/A REGIONAL WEB,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF BUILDING OFFICIALS AND CODE ADMINISTRATORS INTERNATIONAL, INC., INTERNATIONAL CODE COUNCIL, INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

ALAN S. WERNICK
Counsel of Record
QUARLES & BRADY LLC
500 WEST MADISON STREET
SUITE 3700
CHICAGO, IL 60661
(312) 715-5151

23 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

The Conflicts Created by the Fifth Circuit's Decision. 7

The Fifth Circuit's Decision Results in an Unconstitutional Taking of the Copyright Owner's Property Rights. 9

The Fifth Circuit's Decision Creates a Negative Economic Impact on the Marketplace. 13

CONCLUSION 18

TABLE OF AUTHORITIES

Cases:

Banks v. Manchester, 128 U.S. 244 (1888) 7, 8
Building Officials & Code Administrators v. Code Technology, 628 F.2d 730 (1st Cir. 1980).....8
CCC Information Services, Inc. v. Maclean Hunter Market Reports, 44 F.3d 61 (2d Cir. 1994) 6, 8, 13
County of Suffolk v. First American Real Estate Solutions, 261 F.3d 179 (2d Cir. 2001).....8
Feist Publications Inc. v. Rural Tel. Service, Co., 499 U.S. 340 (1991) 8
Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 74 (1982) 10
Palazzolo v. Rhode Island, 533 U.S. 606 (2001).....9
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).....9
Practice Management Info. Corp. v. American Medical Association, 121 F.3d 516 (9th Cir. 1997), cert. denied, 522 U.S. 933 (1997), opinion amended on other grounds, 133 F.3d 1140 (9th Cir. 1998).....8, 13
Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) 10
Roth v. Pritikin, 710 F.2d 934 (2d Cir. 1983) 10
Wheaton v. Peters, 33 U.S. 591 (1834).....7

TABLE OF AUTHORITIES -- Continued

Constitution and Statutes:

U.S. Constitution, Fifth Amendment 5, 10
17 U.S.C. §101 *et seq.* 10
17 U.S.C. §105 12
17 U.S.C. §201(e) 5, 10, 11, 12
28 U.S.C. §1498 13
65 P.L. 182, 65th Cong. Ch. 114, 40 Stat. 704 (1918) 13
National Technology and Transfer Act of 1995, P.L. 104-113, §12(d), 110 Stat. 783 (1996) 9

Miscellaneous:

2000 census (http://www.census.gov/Press-Release/www/2001/tables/redist_tx.html) 16
Bureau of Economics, Federal Trade Commission, staff report "Local Building Codes and the Use of Cost-Savings Methods" (December 1988) 17
H.R. REP. 94-1476 for P.L. 94-553 (1976) 11
National Association of Home Builders, "The Truth About Regulatory Barriers to Housing Affordability" (1998) (http://www.nahb.com/housing_issues/regulate.pdf) 13
Notes of Committee on the Judiciary, House Report No. 94-1476, U.S. Code Cong. & Admin. News 1978 12
Office of Federal Housing Enterprise Oversight (http://www.ofheo.gov/house/) 17

TABLE OF AUTHORITIES -- Continued

Miscellaneous -- Continued:

OMB, Circular A-119, 63 Fed.Reg. 8545 (Feb. 19, 1998) 9
U.S. Bureau of Labor Statistics (http://www.bls.gov) inflation calculator 15

INTEREST OF THE *AMICI CURIAE*[1]

Building Officials and Code Administrators International, Inc. ("BOCA"), International Code Council ("ICC"), and International Conference of Building Officials ("ICBO") are *Amici Curiae* in support of the Southern Building Code Congress, International, Inc. ("SBCCI") petition for writ of certiorari and reversal of the judgment of the United States Court of Appeals for the Fifth Circuit.

Both Petitioner and Respondent have consented to the filing of this brief of *Amici Curiae*.

The interests of the *Amici Curiae* concern their intellectual property copyright rights. The model building codes involved in this case are part of a large genre of creative works, including model codes, standards, and other reference works (hereinafter collectively referred to as "standards"), that are developed by private, not-for-profit organizations and are made available for the use and adoption by government instrumentalities throughout the United States, and for use by the private sector. *Amici Curiae* (BOCA, ICC, and ICBO) are not-for-profit organizations that either develop or whose members

---

[1] Pursuant to Supreme Court Rule 37.6, *Amici Curiae* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *Amici Curiae*, their members, and their counsel, contributed monetarily to the preparation and submission of this brief.

are involved in developing copyrighted standards which are widely used and adopted by local and state governments and federal agencies, as well as the private sector.[2] *Amici Curiae* use the revenue generated from the sales and licensing of their copyrighted standards to support the creation, refinement, and updating of their standards.

BOCA is an independent, voluntary membership, non-profit organization which has been in existence since 1915. BOCA is dedicated to preserving the public health, safety and welfare in the built environment through the creation and development of, and the effective, efficient use and enforcement of, model codes and standards. Over the past fifty years, BOCA has published and disseminated over 135 timely, consensus-based codes and standards pursuant to its mission. BOCA offers and encourages the use of these copyrighted codes and standards by the private sector and government. These codes and standards are also widely used and adopted by local and state jurisdictions throughout the United States, and used by such private organizations as the American Institute of Architects in their involvement with the construction and regulatory processes of the built environment.

---

[2] *See* Addendum 1 to this *Amici Curiae's* brief filed with the Fifth Circuit below which contains fifty-two pages of over 700 citations to numerous statutes, rules, and/or regulations referencing C.F.R. and other provisions adopting by reference various third-party owned and developed standards including ACGIH, ANSI, API, ASTM, FASB, and NFPA codes and standards.

ICC was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes.[3] Code enforcement officials, architects, engineers, designers and contractors can now work with a consistent set of standards throughout the United States. Moreover, manufacturers can put their efforts into research and development rather than designing various sets of standards. Consistent with its mission, ICC's development of model codes encourages uniform education and certification programs that can be used internationally in an effort to obtain consistent code enforcement and higher quality construction.

ICBO has been a leading source of building and construction codes for more than 75 years. ICBO provides its codes in an effort to ensure the public's safety. Like the other *Amici Curiae* herein, ICBO's codes as well as its certification programs result in safer, longer lasting, and more efficient buildings for the public generally.

The *Amici Curiae* and their members rely on copyright protection, and the ability it affords to generate revenue from the licensing and sales of the works they create, to fund the substantial costs of

---

[3] SBCCI, the Petitioner, is a member of one of the *Amici Curiae*, ICC, but does not control ICC; nor has it made monetary or authorship contributions to the submission or preparation of this brief.

creating and continually refining and updating these works. The *Amici Curiae* are precisely the type of organizations which, together with the governments and public which they serve, are most severely affected by a holding invalidating the copyrights in works which are adopted by governmental entities.

For these reasons and for the reasons set forth in the briefs of the other *Amici Curiae*, the *Amici Curiae* have a direct and vital interest in the issues presented to this Court by the present case, and believe that they can provide the Court with additional perspective on the important policy considerations bearing on these issues. *Amici Curiae* respectfully and vigorously urge the Court to grant the Writ of Certiorari and reverse the judgment of the Fifth Circuit Court of Appeals.

SUMMARY OF ARGUMENT

In a clearly divided Court, the *en banc* Fifth Circuit Court of Appeals[4] has created chaos and uncertainty concerning the intellectual property rights of model code and standard developing organizations. Not only has the Fifth Circuit's decision created a conflict between itself and other Circuit Courts of

---

[4] Pet. App. 1a – 66a. The decision was nine to six with two strongly written dissents: one dissenting opinion by Circuit Judge Higginbotham and joined by Chief Judge King, and Circuit Judges Davis and Stewart; and one dissenting opinion by Circuit Judge Wiener and joined by Chief Judge King, and Circuit Judges Higginbotham, Davis, Stewart, and Dennis.

Appeal, but also a conflict between itself and federal statutes authored by Congress and regulations of federal administrative agencies. Furthermore, the Fifth Circuit's decision in violation of the U.S. Constitution, Fifth Amendment, and the U.S. Copyright law (17 U.S.C. §201(e)), has taken the intellectual property rights - the copyright rights - of the model code and standard developing organizations. As for the economic impact of the Fifth Circuit's decision, it will severely reduce the efficiency of the model codes and standards writing and management process, impede the development and establishment of uniform, up-to-date, building codes and standards in the United States, and therefore increase the costs to builders and to the public of obtaining and enforcing the latest standards of building safety.

ARGUMENT

The history of this case is set forth in the Petition. It is necessary for this Court to grant the Writ of Certiorari (a) to resolve the conflicts between the Circuit Courts of Appeals, and other conflicts, created by the decision of the Fifth Circuit; (b) to redress the unlawful taking of the property rights by the Fifth Circuit; and (c) to stabilize the law in this area and thereby restore economic sense to the marketplaces thrown into turmoil by the Fifth Circuit decision. If the Court fails to grant the requested Writ of Certiorari, the model codes and standards industry will be left in a state of legal chaos and confusion over its copyright rights, the value of which, according to the Fifth

Circuit, evaporates when the model codes and standards are adopted by a government entity. As such, the *Amici Curiae*, and other similarly situated copyright owners, are now faced with a lack of uniformity in the enforceability of their copyright rights, to wit, the Second and Ninth Circuits enforce these valuable copyright rights, and the Fifth Circuit does not.

Furthermore, other copyright owners (e.g., authors of schoolbooks) whose works are mandated by a government entity for use stand at risk of losing their copyrights as well because of the Fifth Circuit's decision. As the Second Circuit states in *CCC Information Services, Inc. v. Maclean Hunter Market Reports*, 44 F.3d 61, 74 (2d Cir. 1994): "For example, a rule that the adoption of such a reference by a state legislature or administrative body deprived the copyright owner of its property would raise very substantial problems under the Takings Clause of the Constitution. We note also that for generations, state education systems have assigned books under copyright to comply with a mandatory school curriculum. It scarcely extends CCC's argument to require that all such assigned books lose their copyright--as one cannot comply with the legal requirements without using the copyrighted works. Yet we think it unlikely courts would reach this conclusion." The bottom line is that the *en banc* Fifth Circuit decision creates a blanket rule that once a copyrighted work is enacted (even by incorporation by reference) into a regulation or law, the work loses its

entire copyright protection, *ipso facto*, regardless of the nature of the author, the character of the work, or the relationship of the copier to the work or to the government entity that enacted the work into law through incorporation by reference.[5] This rule of the Fifth Circuit is contrary to other circuit courts of appeal and thereby disrupts the uniform enforceability of the copyrights in the model codes and standards.

The Conflicts Created by the Fifth Circuit's Decision.

The majority falters in its analysis of the applicable law. Copyright jurisprudence teaches that a pivotal question in the analysis of copyright law is: Who is the author? As applicable to the facts of the instant case, are the judges who author court decisions the author? Are the legislators who author statutes the author? Are government agencies promulgating regulations the author? Are the private nonprofit organizations that develop model codes and standards, which are adopted into law through incorporation by reference, the author? In the cases from this Court erroneously cited by the Fifth Circuit in support of its decision, the authors of the "law" were judges, not private individuals or a private nonprofit entity such as the Petitioner in this case. *Banks v. Manchester*, 128 U.S. 244 (1888); *Wheaton v. Peters*, 33 U.S. 591 (1834). In both *Wheaton* and *Banks*, the authors of the subject works were the judges who wrote the decisions ("the judicial

---

[5] *See* Circuit Judge Wiener's dissenting opinion at Pet. App. 31a - 66a.

officers in the discharge of their judicial duties." *Banks*, 128 U.S. 244, 253). Thus, the Fifth Circuit *en banc* decision misinterprets these cases of the United States Supreme Court.[6]

Furthermore, the Fifth Circuit *en banc* decision is in conflict with the Second Circuit[7] and the Ninth Circuit.[8] In addition, the Fifth Circuit is in conflict with the Congress' and the administrative agencies' position on the use of privately created model codes and standards.[9]

---

[6] *See also Feist Publications Inc. v. Rural Tel. Service, Co.*, 499 U.S. 340 (1991).

[7] *County of Suffolk v. First American Real Estate Solutions*, 261 F.3d 179, 193 (2d Cir. 2001) ("The determination that no one may own a copyright in statutes and opinions arises not from a specific provision of the Copyright Act, but from a 'judicial gloss' on the Act."), citing *Building Officials & Code Administrators v. Code Technology*, 628 F.2d 730, 735 (1st Cir. 1980); *CCC Information Services, Inc. v. Maclean Hunter Market Reports*, 44 F.3d 61, 74 (2d Cir. 1994) ("We are not prepared to hold that a state's reference to a copyrighted work as a legal standard for valuation results in loss of the copyright.").

[8] *Practice Management Info. Corp. v. American Medical Association*, 121 F.3d 516 (9th Cir. 1997), cert. denied, 522 U.S. 933 (1997), opinion amended on other grounds, 133 F.3d 1140 (9th Cir. 1998).

[9] National Technology and Transfer Act of 1995 ("NTTA"), P.L. 104-113, §12(d), 110 Stat. 783 (1996) in which Congress

The Fifth Circuit's Decision Results in an Unconstitutional Taking of the Copyright Owner's Property Rights.

The Fifth Circuit's decision casts a dark cloud over copyright owners' legal rights: beware of success, because if your copyrighted works are adopted by a government entity, you will lose your intellectual property rights. The decision creates an irrebuttable presumption that the act of adoption of the copyrighted work (e.g., the model codes and standards) by a government entity means that the copyright owner intended to place a copyrighted work into the public domain. Through this action, the Court is effectively regulating the copyright owner's control over and use of the copyrighted work. As this Court states in *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001): "In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-

---

expressly directs "Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies." OMB, Circular A-119, 63 Fed.Reg. 8545, 8555 (Feb. 19, 1998) designed to provide guidance to federal agencies regarding NTTA requires that "[i]f a voluntary standard is used and published in an agency document, your *agency must observe and protect the rights of the copyright holder and any other similar obligations.*" (Emphasis added.)

known, if less than self-defining, formulation, 'while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.' *Id.* at 415."

Model codes and standards are protected by copyright (17 U.S.C. §101 *et seq.*) and in no instance heretofore has an adoption by a government entity resulted in the taking of the owner's underlying copyrights. The United States Constitution, Fifth Amendment (applicable to the States through the Fourteenth Amendment), states: "...nor shall private property be taken for public use, without just compensation." An interest in copyright is a property right protected by the due process and just compensation clauses of the Constitution. *Roth v. Pritikin*, 710 F.2d 934, 939 (2d Cir. 1983) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 74 (1982); *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).) Thus, the Fifth Circuit's decision, and the resulting taking of the copyright owner's copyright property by thrusting it into the public domain, is contrary to the Fifth Amendment of the U.S. Constitution.

Also, despite the taking of the copyright as determined by the Fifth Circuit, the copyright law (17 U.S.C. §201(e) "Involuntary transfer.") specifically forbids such an act: "...**no action by any governmental body** or other official or organization **purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright**, or any of the exclusive rights under a copyright, **shall be given**

effect under this title." (emphasis added.) The legislative history of the copyright law clearly recognizes this conclusion as well when Congress says: "**The purpose of this subsection is to reaffirm the basic principle that the United States copyright of an individual author shall be secured to that author, and cannot be taken away by any involuntary transfer**. It is **the intent of the subsection** that the author be entitled, despite any purported expropriation or involuntary transfer, to continue exercising all rights under the United States statute...."[10] (Emphasis added.) However, the majority in the Fifth Circuit disregards the plain meaning of both the federal statute

---

[10] As stated in the legislative history for 17 U.S.C. §201(e): "Subsection (e) provides that when an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, have not previously been voluntarily transferred, no action by any governmental body, or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title. The purpose of this subsection is to reaffirm the basic principle that the United States copyright of an individual author shall be secured to that author, and cannot be taken away by any involuntary transfer. It is **the intent of the subsection** that the author be entitled, despite any purported expropriation or involuntary transfer, to continue exercising all rights under the United States statute, and that **the governmental body or organization may not enforce or exercise any rights** under this title in that situation." H.R. REP. 94-1476 for P.L. 94-553 (1976). (Emphasis added.)

(17 U.S.C. §201(e)) and its legislative history. *Amici Curiae* urge this Court not to lose sight of this plain meaning in light of Veeck's clear and unequivocal infringement of SBCCI's (Petitioner's) copyrights.

In addition to the legislative history of 17 U.S.C. §201(e), the legislative history of 17 U.S.C. §105[11] is informative. The House Judiciary Committee stated in its report: "The committee here observes: (1) there is nothing in section 105 [this section] that would relieve **the Government of its obligation to secure permission in order to publish a copyrighted work**; and (2) publication or other **use by the Government of a private work would not affect its copyright protection in any way**." Notes of Committee on the Judiciary, House Report No. 94-1476, U.S. Code Cong. & Admin. News 1978. (Emphasis added.) Yet, contrary to Congress' intent, the majority did exactly what Congress says it does not want to happen ("**use by the Government of a private work would not affect its copyright protection in any way**"), to wit, the government's taking of the copyright. Such a taking is contrary to much precedent including the United States Copyright statute, Congress' intent as recorded in the

---

[11] 17 U.S.C. §105: "Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise."

legislative history, and the decisions[12] of other United States Courts of Appeal.

An examination of the taking issue in the context of patents reveals that it took a world war and an act of Congress to allow the U.S. government to use the patent rights of patent owners[13] and then such use was subject to the requirement of compensation to the patent owner.[14]

The Fifth Circuit's Decision Creates a Negative Economic Impact on the Marketplace.

Currently, regulation as to "where" buildings are built (e.g., zoning laws, environmental laws, historic preservation laws) currently represent a greater cost to residential development than those for "how" buildings are built (e.g., building codes).[15] However,

---

[12] *See, e.g., CCC Information Services, Inc. v. Maclean Hunter Market Reports,* 44 F.3d 61 (2d Cir. 1994); *Practice Management Info. Corp. v. American Medical Association,* 121 F.3d 516 (9th Cir. 1997), cert. denied, 522 U.S. 933 (1997), opinion amended on other grounds, 133 F.3d 1140 (9th Cir. 1998).

[13] 65 P.L. 182, 65th Cong. Ch. 114, 40 Stat. 704 (1918).

[14] 28 U.S.C. §1498.

[15] National Association of Home Builders, "The Truth About Regulatory Barriers to Housing Affordability," (pages 4, 9, 14) (1998) available at http://www.nahb.com /housing_issues/ regulate.pdf.

the code development process does not occur in a vacuum, nor without expense. The decision of the Fifth Circuit, by cutting off the revenue stream flowing from the copyright rights, drains the primary funding source for consensus based model codes and standards created by nonprofit organizations that rely on that revenue stream to support the model codes and standards development and maintenance process. Without that revenue, these nonprofit organizations, such as the *Amici Curiae* and the Petitioner, will not be able to fund the development and maintenance of the model codes and standards. Nevertheless, the judgment of the Fifth Circuit appears to assume that some hypothetical funding system will magically appear when the copyright revenue is denied the model code and standard organizations.

If the nonprofit organizations that create and maintain consensus based model codes and standards disappear because their primary source of revenue (i.e., the revenue from their copyright rights) is destroyed as a result of the Fifth Circuit's decision, the need for codes and standards in the built environment will remain. In order to fill that need, government agencies will have to pay for the creation of codes and standards.

Presently, the model codes are paid for by the users of the model codes (equivalent to a "use" tax). As a result of the Fifth Circuit's decision, each and every model code and standard writing organization, many of whom are *Amici Curiae* in support of Petitioner in

this case, loses the ability to earn a revenue from their copyrighted works. The model code and standard writing industry, as it has evolved to the present, will be thrust into financial and legal chaos and uncertainty if it has its valuable copyright rights, and the revenue that flows there from, taken. Few industries, if any, could continue if their revenue streams were taken away as the Fifth Circuit has ruled. The practical implication of the Fifth Circuit's decision is that if the nonprofit organizations that create the model codes and standards were to cease publication, then every taxpayer would have to contribute in the form of increased taxes to pay for the cost of the development of the building code by the taxpayer's respective community (currently it is zero or minimal since the model code organizations do not charge the government entity anything for incorporating a model code by reference).

As reported in "Codes and Code Administration, An Introduction to Building Regulations in the United States" by Richard L. Sanderson (1969, published by Building Officials Conference of America, Inc., at page 9), New York City spent a million and a half dollars ($1,500,000.00) to write its 1968 building code. In 2001 dollars that would be the equivalent of about Seven Million Six Hundred Thousand Dollars ($7,600,000.00).[16] Could the communities of Anna and Savoy, Texas afford this

---

[16] As per the U.S. Bureau of Labor Statistics (http://www.bls.gov) inflation calculator.

cost?[17] Very few communities could afford the cost to develop and maintain the quality building codes needed in today's environment, let alone one that will assure compatibility with neighboring communities as available with the model codes.

Furthermore, even if the communities who need building codes could afford the cost, they would not be in the best position to create and maintain consensus based codes which were up-to-date, uniform and compatible with neighboring communities. This would create a multitude of building codes, which would lack the uniformity, quality, and consensus based analysis of the model code development process. The building industry would lose the efficiencies of dealing with uniform model codes. Such a loss of efficiency in the building process would result in increased construction costs. In all likelihood these increased costs would be passed along to the consumer as increases in the cost of building new construction and maintaining existing properties. At the same time, such change will distort the perception of these costs in the construction market.

---

[17] According to the 2000 census, Anna, Texas, has a total population of 1,225, and Savoy, Texas, has a population of 850. (http://www.census.gov/Press-Release/www/2001/tables/redist_tx.html). Thus, based on the historical cost for one city, New York, to develop its own building code, if Anna, Texas, decided to create its own building code, the per capita cost in 2001 dollars, would be about $6,200. And, that is for only creating the building code and does not include the cost to maintain it.

This is on top of the costs to communities of creating and enforcing their own codes!

As recent statistics[18] have shown, the cost of the American dream of home ownership is getting further away from the average citizen. Yet, through destroying the copyrights in model codes which help protect public health, safety, and welfare, the Fifth Circuit's decision would bring about an increase in costs to the taxpayer and potential homeowners by requiring local communities to pay the cost of developing building codes.[19] To recap, the Fifth Circuit decision would

---

[18] According to the Office of Federal Housing Enterprise Oversight (http://www.ofheo.gov/house/) ("OFHEO"), the average American home increased in market value by 8.8 percent from the first quarter of 2000 through the first quarter of 2001. OFHEO tracks over 180 of the largest markets in the country. 8.8 percent is the highest rate of home price inflation measured by the federal agency in over 15 years.

[19] The Bureau of Economics of the Federal Trade Commission prepared a staff report titled "Local Building Codes and the Use of Cost-Savings Methods" (December 1988) (the "FTC Report"). The FTC Report (at page iii) states "Previous studies concluded that locally-drafted building codes increase construction costs for single-family houses. Using more recent information, this study finds that locally-drafted building codes no longer significantly increase building costs.... almost all localities now have either adopted ... model codes or are covered by a state code based on ... model codes." This FTC Report also refers to a study of 162 cities during 1981 and states (at page iv): "The study

transfer code development and maintenance costs from the users of the codes to the general taxpayers, reduce the efficiency of the code writing and maintenance process, lessen the ability of communities to obtain the most up-to-date and uniform information regarding codes and standards, and increase the costs to the construction market of adhering to the codes and standards.

CONCLUSION

Amici curiae respectfully request that the Court grant the petition for a writ of certiorari and reverse the judgment below.

Respectfully submitted.

ALAN S. WERNICK
Counsel of Record
QUARLES & BRADY LLC
500 WEST MADISON STREET
SUITE 3700
CHICAGO, IL 60661
(312) 715-5151

Counsel for Amici Curiae

OCTOBER 2002

---

finds that building codes are not written locally in 97 percent of these jurisdictions. Virtually all these cities have adopted model codes or are covered by state codes based on a model code."